

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-CV-00293-RWS
(Lead Case)

JURY TRIAL DEMANDED

**SAMSUNG’S RESPONSE RELATING TO
NETLIST’S REQUEST FOR AN EMERGENCY CONFERENCE (DKT. 764)**

There is no emergency here. The week of September 30, 2024—which counsel for Netlist indicated was its preference—remains the obvious option for a trial. In the event that that date is not available for the Court, Samsung provided Netlist with its conflicts for October.

Netlist’s request for an emergency conference misrepresents the discussions that occurred yesterday between the parties and with the Court. Samsung has been forthcoming with Netlist about the conflicts that existed with its experts for the months of October and November, and communicated them to counsel for Netlist last week. For example, Samsung informed Netlist that Ms. Kindler was committed to trial during the week of October 7, 2024 in the Western District of Washington—*Utherverse LLC v. Epic Games Inc.*, No. 2:21-CV-799-RSM (W.D. Wash.)—as well as a trial in this Court that week. *See* Ex. A (Email fr. McKeon to Sheasby). Samsung also informed Netlist that Ms. Kindler has a trial during the week of September 23. *See* Ex. B (Email fr. McKeon to Sheasby).

Thus, it was clear from the parties’ discussions that a trial on damages would not be possible during the week of October 7. And there was never a discussion of holding a trial the week of October 7 on all issues—as the Court recalls, we discussed a three-day trial from

October 7 to 9 on liability issues only. That option remains available if the Court prefers to have a liability only trial during those days.

At the end of the session yesterday, counsel for Netlist indicated that Netlist was going to request “tomorrow” (i.e., August 27) that the Court set a trial date for the week of September 30. Samsung’s counsel indicated that there were no conflicts that week, and that we would check with Samsung so that the parties can submit a joint filing. And counsel for Samsung has indicated there are no conflicts the weeks of October 21 (although we recognize bench/bar is that week) and October 28. All of this was communicated to Netlist *before* it filed this emergency request. *See* Ex. C (Email fr. McKeon to Sheasby). Samsung indicated that the parties should meet and confer so a joint submission could be made rather than burdening the Court with an emergency request. *See* Ex. D (Email fr. Tishman to Sheasby). Regarding the conflict with Mr. McAlexander on September 26 and 27, this information was communicated to counsel on Sunday in light of discussions around a September trial on issues occurring that week. *See* Ex. B. In light of the Court’s decision yesterday, all that remains is to select a date in October. As noted above, Netlist’s preferred week of September 30, 2024, remains an option.

Dated: August 27, 2024

Respectfully submitted,

By: /s/ Michael J. McKeon

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on August 27, 2024. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and via electronic mail.

/s/ Michael J. McKeon
